

DESCRIPTION OF H.R. 3199
AS PRESENTED BY THE RULES COMMITTEE

H.R. 3199 would make permanent all of the sunset provisions of the PATRIOT Act, save Section 206, concerning John Doe Roving Wiretaps, and Section 215, concerning foreign intelligence orders for any tangible thing, which are renewed for 10 years each. It also makes permanent the material support and lone wolf authorities created in the intelligence reform bill last fall.¹

The bill makes several changes to current law. First, H.R. 3199 allows a Section 215 recipient to challenge his order in writing before a three-judge panel of the Foreign Intelligence Surveillance Court (FISC) in Washington, DC, and assert that FISA, as written was wrongly applied to his order. Arguably, it also provides that a person may discuss his 215 order with his attorney.

Second, H.R. 3199 creates a “return” on Section 206 John Doe Roving Wiretap orders. It simply provides that after a roving wiretap is issued, the Justice Department return to the FISA court and certify what facilities were ultimately tapped within “a reasonable amount of time.”

Third, the legislation amends Section 203(b) of the PATRIOT Act. Section 203(b) allows federal agencies to share information it gathers from electronic, oral and wire intercepts with other departments and agencies. This bill would require the government to notify the court that approved the original surveillance of the sharing.

Fourth, H.R. 3199 alters Section 207 of the PATRIOT Act pertaining to the length of FISA orders. It limits the new extended durations to non-U.S. persons, and extended pen register and trap and trace orders to one year.

Fifth, during the markup, a Lungren amendment was accepted that created an annual reporting requirement on Section 212, which immunizes private companies for their voluntary disclosures of electronic information to law enforcement in emergency situations.

Sixth, during markup, a Schiff amendment was accepted which would add to the list of activities which, if done willfully, will result in violating the statute which prohibits the planning of terrorist attacks on mass transportation (18 USC 1993(a)(3)).

Seventh, during markup, a Lofgren amendment was accepted which amends Section 1001 of the PATRIOT Act to require the Inspector General of the Department of Justice to also report on the detentions of persons by the United States, including information about the length of detention, the offense, and the conditions and frequency of their access to counsel.

Eighth, during markup, a Schiff amendment was accepted which (a) adds to the list of predicate offenses which are considered “federal crimes of terrorism”; (b) allows for the forfeiture of property involved in the trafficking of weapons of mass destruction; and (c) adds

¹Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108- 458, Sections 6603 and 6001, respectively.

numerous crimes related to terrorism to the list of offenses for which oral and wire communications may be intercepted under 18 U.S.C. 2516.

Finally, during the markup, Mr. Nadler and Mr. Flake offered a bipartisan amendment to address the notification delay period relating to the Section 213 “sneak and peek” provision. Under their amendment, the initial period of delayed notification of secret searches may not be for more than 180 days, and extensions may be given for not more than 90 days at a time. The new “catch all” that allows the secret search of homes and other places remains.

It is important to note that the 9/11 Commission recommended that to retain any new authorities, **“The burden of proof for retaining a particular government power should be on the executive to explain (a) that the power materially enhances security and (b) that there is adequate supervision of the executive’s use of those powers to ensure protection of civil liberties.”**² We have never been given the facts necessary to properly evaluate its operation; however, based upon the information we have been able to glean our review indicates that this burden has not been met. For these and the reasons set forth herein, we oppose H.R. 3199

² *The 9/11 Commission Report*, National Commission on Terrorist Attacks Upon the United States, at 395.